UNITED STATES BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK

In re

ANTHONY BRIATICO

Case No. 17-12186-cgm Chapter 13

Debtor.

### OBJECTION TO CONFIRMATION OF DEBTOR'S PLAN

### TO THE HONORABLE CECELIA G. MORRIS,

- I, Mark K. Broyles, do hereby certify as follows:
- 1. I am an attorney at law of the State of New York with the law firm of FEIN, SUCH & CRANE, LLP, attorneys for RUSHMORE LOAN MANAGEMENT SERVICES AS SERVICER FOR MTGLQ INVESTORS, LP ("Secured Creditor" herein), and I am fully familiar with the facts and circumstances of the within matter, and make this affirmation in objection to the confirmation of the Debtor's proposed Chapter 13 plan (the "Plan").
  - (a) Secured Creditor holds the first mortgage on Debtor's residence which is located at 433 W 34th Street, Apt. 13H, New York, NY 10001. As of the date of bankruptcy filing the Debtor was in default on the terms of the Note and Mortgage.
  - (b) The Plan states that the Debtor is seeking a mortgage modification in respect to the above referenced property; however, in the event Loss Mitigation is unsuccessful, the Plan fails to provide for any arrears to Secured Creditor.
  - (c) A Proof of Claim has been filed on behalf of Secured Creditor and is annexed hereto as Exhibit "A." The amount necessary to cure the default as evidenced by the original claim is \$67,373.25.

17-12186-cgm Doc 22 Filed 10/31/17 Entered 10/31/17 10:24:01 Main Document Pg 2 of 7

(d) It is respectfully submitted that by reason of the foregoing, Secured Creditor has not been adequately provided for in the proposed Plan.

WHEREFORE, the undersigned objects to the confirmation of the Chapter 13 Plan and respectfully requests such other relief as may be deemed just and proper.

Dated: 10/26/17

FEIN, SUCH & CRANE, LLP.

Attorneys for the Secured Creditor, Rushmore Loan Management Services

By

Mark K. Broyles, Esq

17-12186-cgm **D**.76e12221.86F-digth10/C3124/11777-EntFired 1100/C315/1177 10P2cy41046f 5Main Document Pa 3 of 7

Fill in this information to identify the case:
Debtor 1 ANTHONY BRIATICO
Debtor 2
United States Bankruptcy Court for the SOUTHERN District of New York
Case number 17-12186-cam

**EXHIBIT A** 

Official Form 410

Proof of Claim 04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment. A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

#### Part 1: Identify the Claim MTGLQ INVESTORS, LP 1. Who is the current creditor? Other names the creditor used with the debtor 2. Has this claim been acquired from someone else? 3. Where should notices and Where should notices to the creditor be Where should payments to the creditor be payments to the creditor be sent (if different) sent? sent? Federal Rule of Bankruptcy Rushmore Loan Management Services Rushmore Loan Management Services Procedure (FRBP) 2002(g) P.O. Box 55004 P.O. Box 52708 Irvine, CA 92619-2708 Irvine, CA 92619-2708 Phone # 888-504-6700 Phone # 888-504-6700 Uniform claim identifier for electronic payments in chapter 13 (if you use one) 4. Does this claim amend one ■ No □ Yes. Claim number on courts claims already filed? registry (if known) N/A 5. Do you know if anyone No else has filed a proof □ Yes. Who made the earlier filing? of claim for this claim?

6. Do you have any number you use to identify the debtor? □ No □ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:  □ No □ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:  □ *********3649	Part 2:	Give inform	ation about the Claim as of the date the case was filed
	number y	you use to	

## 

7. How much is the claim?	□ No.												
8. What is the basis of the claim?	death, or credit card. Attach redacted copies of any documents supporting the claim 3001(c).	ttach redacted copies of any documents supporting the claim required by Bankruptcy Rule 001(c). imit disclosing information that is entitled to privacy, such as health care information.											
9. Is all or part of the claim secured?	The claim is secured by a lien on property.  Nature of property:  Real Estate. If the claim is secured by the debtors principal residence, file a Mortgage Proof of Claim Attachment (Official Form 410-A) with this Proof of Claim.  Motor Vehicle  Other. Describe:  Basis for perfection: Recorded UCC Financing Statement Value of property: \$												
10. Is this claim based on a lease?	<ul><li>No</li><li>Yes. Amount necessary to cure any default as of the date of</li></ul>	of the petition. \$											
11. Is this claim subject to a right of setoff?	No     □ Yes. Identify the property:												
12. Is all or part of the claim entitled to	⊠ No	Amount entitled to priority											
priority under 11 U.S.C. § 507(a)?	<ul> <li>□ Yes. Check all that apply:</li> <li>□ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).</li> </ul>	\$											
A claim may be partly priority and partly nonpriority.	□ Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$											
For example, in some categories, the law limits the	<ul> <li>Wages, salaries, or commissions (up to \$12,850*)</li> <li>earned within 180 days before the bankruptcy</li> <li>petition is filed or the debtor's business ends,</li> </ul>	\$											
amount entitled to priority.	whichever is earlier. 11 U.S.C. § 507(a)(4).  □ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$											
	□ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$											
	□ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. *Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment	\$											

Part 3: Sign Below	
The person completing this proof of claim must sign and date it. FRBP 9011(b).	Check the appropriate box:  □ I am the creditor.  □ I am the creditor's attorney or authorized agent.  □ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.  □ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.
If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.	I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.  I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.
A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.	I declare under penalty of perjury that the foregoing is true and correct.  Executed on date: 10 5 17  X  Signature  Print the name of the person who is completing and signing this claim:
	Name: Mark K. Broyles, Esq.  Title: Attorney for Secured Creditor
	Company: Fein, Such & Crane, LLP. Identify the corporate servicer as the company if the authorized agent is a servicer.
	Address: 28 East Main Street, Suite 1800 Number Street
	Rochester, NY 14614  City State Zip

Contact phone: 585-232-7400 Email:weinhartr@feinsuchcrane.com

## 

#### Mortgage Proof of Claim Attachment (12/15)

Page 1 of 2

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions

Part 1: Mortgage and Cas	e Information	Part 2: Total Debt Calculation		Part 3: Arrearage as of Date of the P	etition	Part 4: Monthly Mortgage Payment			
Case Number	17-12186-cgm	Principal Balance	\$263,731.31	Principal & Interest Due	\$44,223.84	Principal & Interest	\$1,637.92		
Debtor 1	Anthony Briatico	Interest Due	\$32,089.29	Prepetition fees due	\$23,356.80	Monthly Escrow	\$0.00		
Debtor 2		Fees, Costs Due	\$23,356.80	Escrow deficiency for funds advanced	\$0.00	Private Mortgage Insurance			
Last 4 digits used to Identify		Escrow deficiency for funds advanced	\$0.00	Projected Escrow shortage	\$0.00	_			
Creditor	MTGLQ Investors, LP	Less total funds on hand	-\$207.39	Less funds on hand	-\$207.39				
Servicer	Rushmore Loan Management Services	Total	\$318,970.01	Total prepetition arrearage	\$67,373.25	Total Monthly Payment	\$1,637.92		
Fixed accural, Daily simple	Sixed Account								

Part 5: Lo	an Payment	History from First	Date of Default																
		Accou	ınt Activity	How funds were applied/Amount Incurred									Balance after amount received or incurred						
A.	B. Contractual	С.	D.	Е.	F. Contractual due	G. Prin, in & esc past due	H. Amount to	I. Amount to	J. Amount to	K. Amount to fees or	L. Unapplied	M. Principal	Accured	O. Escrow	P. Fees/ Charges	Q. Unapplied			
Date	Payment amount	Funds received	Amount Incurred	Description	date	balances	principal	interest	escrow	charges	funds	Balance	balance	Balance	Balance	Funds Balance			
				Beginning Balances	7/1/201	\$18,017.12	2					\$268,621.76	\$0.00	\$0.00	\$0.00	0 \$0.00			
7/16/2014			\$81.90	Late Charge	7/1/201	\$18,017.12	2			\$81.90		\$268,621.76	\$0.00	\$0.00	\$81.90	0 \$0.00			
8/18/2014			\$81.90	Late Charge	7/1/201	\$18,017.12	2			\$81.90		\$268,621.76	\$0.00	\$0.00	\$163.80	0 \$0.00			
9/16/2014			\$81.90	Late Charge	7/1/201	\$18,017.12	2			\$81.90		\$268,621.76	\$0.00	\$0.00	\$245.70	0 \$0.00			
10/16/2014			\$81.90	Late Charge	7/1/201	\$18,017.12	2			\$81.90		\$268,621.76	\$0.00	\$0.00	\$327.60	0 \$0.00			
11/17/2014			\$81.90	Late Charge	7/1/201	\$18,017.12	2			\$81.90	)	\$268,621.76	\$0.00	\$0.00	\$409.50	0 \$0.00			
4/16/2015			\$81.90	Late Charge	7/1/201	\$18,017.12	2			\$81.90	)	\$268,621.76	\$0.00	\$0.00	\$491.40	0 \$0.00			
6/1/2015	\$1,637.92			Payment Due	7/1/201	\$19,655.04						\$268,621.76	\$0.00	\$0.00	\$491.40	0 \$0.00			
6/26/2015			\$50.00	Publication Fee	7/1/201	\$19,655.04				\$50.00		\$268,621.76	\$0.00	\$0.00	\$541.40	0 \$0.00			
7/1/2015	\$1,637.92			Payment Due	7/1/201	\$21,292.90	5					\$268,621.76	\$0.00	\$0.00	\$541.40	0 \$0.00			
8/1/2015	\$1,637.92			Payment Due	7/1/201	\$22,930.8	3					\$268,621.76	\$0.00	\$0.00	\$541.40	0 \$0.00			
8/7/2015			\$200.00	F/C Atty Fees	7/1/201	\$22,930.88	8			\$200.00	)	\$268,621.76	\$0.00	\$0.00	\$741.40	0 \$0.00			
8/14/2015			\$9,999.99	F/C Atty Fees	7/1/201	\$22,930.88	8			\$9,999.99		\$268,621.76	\$0.00	\$0.00	\$10,741.39	9 \$0.00			
8/14/2015			\$489.77	F/C Atty Fees	7/1/201	\$22,930.8	8			\$489.77	,	\$268,621.76	\$0.00	\$0.00	\$11,231.16	50.00			
9/1/2015	\$1,637.92			Payment Due	7/1/201	\$24,568.80						\$268,621.76	\$0.00	\$0.00	\$11,231.16	6 \$0.00			
10/1/2015	\$1,637.92			Payment Due	7/1/201	\$26,206.72	2					\$268,621.76	\$0.00	\$0.00	\$11,231.16	50.00			
10/28/2015			\$200.00	F/C Atty Fees	7/1/201	\$26,206.72	9			\$200.00	)	\$268,621.76	\$0.00	\$0.00	\$11,431.16	50.00			
11/1/2015	\$1,637.92			Payment Due	7/1/201	\$27,844.64						\$268,621.76	\$0.00	\$0.00	\$11,431.16	50.00			
11/5/2015			\$382.50	F/C Atty Fees	7/1/201	\$27,844.64				\$382.50		\$268,621.76	\$0.00	\$0.00	\$11,813.66	6 \$0.00			
11/23/2015			\$2,325.38	F/C Atty Fees	7/1/201	\$27,844.64				\$2,325.38	3	\$268,621.76	\$0.00	\$0.00	\$14,139.04	4 \$0.00			
11/23/2015			\$733.50	F/C Atty Fees	7/1/201	\$27,844.64				\$733.50		\$268,621.76	\$0.00	\$0.00	\$14,872.54	4 \$0.00			
12/1/2015	\$1,637.92			Payment Due	7/1/201	\$29,482.56	5					\$268,621.76	\$0.00	\$0.00	\$14,872.54	4 \$0.00			
1/1/2016	\$1,637.92			Payment Due	7/1/201	\$31,120.48	8					\$268,621.76	\$0.00	\$0.00	\$14,872.54	4 \$0.00			
1/5/2016			\$720.00	F/C Atty Fees	7/1/201	\$31,120.4				\$720.00	)	\$268,621.76	\$0.00	\$0.00	\$15,592.54	4 \$0.00			
1/5/2016			\$2,736.50	Publication Fee	7/1/201	\$31,120.48				\$2,736.50	)	\$268,621.76	\$0.00	\$0.00	\$18,329.04	4 \$0.00			
1/25/2016		\$1,637.92		Payment Received	7/1/201	\$29,482.56	\$434.72	\$1,203.20	0			\$268,187.04	\$0.00	\$0.00	\$18,329.04	4 \$0.00			
2/1/2016	\$1,637.92			Payment Due	8/1/201	\$31,120.48	3					\$268,187.04	\$0.00	\$0.00	\$18,329.04	\$0.00			
2/12/2016		\$1,637.92		Payment Received	8/1/201	\$29,482.56	\$436.67	\$1,201.2	5			\$267,750.37	\$0.00	\$0.00	\$18,329.04	\$0.00			
3/1/2016	\$1,637.92			Payment Due	9/1/201	\$31,120.48						\$267,750.37	\$0.00	\$0.00	\$18,329.04	4 \$0.00			
3/8/2016		\$1,637.92		Payment Received	9/1/201	\$29,482.56	\$438.62	\$1,199.30	0			\$267,311.75	\$0.00	\$0.00	\$18,329.04	4 \$0.00			
4/1/2016	\$1,637.92			Payment Due	10/1/201	\$31,120.4	3					\$267,311.75	\$0.00	\$0.00	\$18,329.04	\$0.00			
4/18/2016		\$1,637.92		Payment Received	10/1/201	\$29,482.56	\$440.59	\$1,197.3	3			\$266,871.16	\$0.00	\$0.00	\$18,329.04	4 \$0.00			
5/1/2016	\$1,637.92			Payment Due	11/1/201	\$31,120.48	8					\$266,871.16	\$0.00	\$0.00	\$18,329.04	4 \$0.00			
5/18/2016		\$1,679.28		Payment Received	11/1/201	\$29,482.56	\$442.56	\$1,195.30	5		\$41.36	\$266,428.60	\$0.00	\$0.00	\$18,329.04	4 \$41.36			
6/1/2016	\$1,637.92			Payment Due	12/1/201	\$31,120.4	8					\$266,428.60	\$0.00	\$0.00	\$18,329.04	4 \$41.36			

# 17-12186-cgm Dig e12221.86Fögth10/C3lah/lb77-1EntFired 1100/C015/117/10P2g450fbf 5Main Document Pg 7 of 7

									 -		1		-		
6/21/2016		\$1,637.92		Payment Received	12/1/2014	\$29,482.56	\$444.54	\$1,193.38			\$265,984.06	\$0.00	\$0.00	\$18,329.04	\$41.36
7/1/2016	\$1,637.92			Payment Due	1/1/2015	\$31,120.48					\$265,984.06	\$0.00	\$0.00	\$18,329.04	\$41.36
8/1/2016	\$1,637.92			Payment Due	1/1/2015	\$32,758.40					\$265,984.06	\$0.00	\$0.00	\$18,329.04	\$41.36
8/29/2016		\$1,637.92		Payment Received	1/1/2015	\$31,120.48	\$446.53	\$1,191.39			\$265,537.53	\$0.00	\$0.00	\$18,329.04	\$41.36
9/1/2016	\$1,637.92			Payment Due	2/1/2015	\$32,758.40					\$265,537.53	\$0.00	\$0.00	\$18,329.04	\$41.36
9/8/2016		\$1,637.92		Payment Received	2/1/2015	\$31,120.48	\$448.53	\$1,189.39			\$265,089.00	\$0.00	\$0.00	\$18,329.04	\$41.36
10/1/2016	\$1,637.92			Payment Due	3/1/2015	\$32,758.40					\$265,089.00	\$0.00	\$0.00	\$18,329.04	\$41.36
11/1/2016	\$1,637.92			Payment Due	3/1/2015	\$34,396.32					\$265,089.00	\$0.00	\$0.00	\$18,329.04	\$41.36
12/1/2016	\$1,637.92			Payment Due	3/1/2015	\$36,034.24					\$265,089.00	\$0.00	\$0.00	\$18,329.04	\$41.36
12/6/2016		\$1,700.00		Payment Received	3/1/2015	\$34,396.32	\$450.54	\$1,187.38		\$62.08	\$264,638.46	\$0.00	\$0.00	\$18,329.04	\$103.44
1/1/2017	\$1,637.92			Payment Due	4/1/2015	\$36,034.24					\$264,638.46	\$0.00	\$0.00	\$18,329.04	\$103.44
1/23/2017		\$1,700.00		Payment Received	4/1/2015	\$34,396.32	\$452.56	\$1,185.36		\$62.08	\$264,185.90	\$0.00	\$0.00	\$18,329.04	\$165.52
2/1/2017	\$1,637.92			Payment Due	5/1/2015	\$36,034.24					\$264,185.90	\$0.00	\$0.00	\$18,329.04	\$165.52
3/1/2017	\$1,637.92			Payment Due	5/1/2015	\$37,672.16					\$264,185.90	\$0.00	\$0.00	\$18,329.04	\$165.52
4/1/2017	\$1,637.92			Payment Due	5/1/2015	\$39,310.08					\$264,185.90	\$0.00	\$0.00	\$18,329.04	\$165.52
4/28/2017		\$1,679.79		Payment Received	5/1/2015	\$37,672.16	\$454.59	\$1,183.33		\$41.87	\$263,731.31	\$0.00	\$0.00	\$18,329.04	\$207.39
5/1/2017	\$1,637.92			Payment Due	6/1/2015	\$39,310.08					\$263,731.31	\$0.00	\$0.00	\$18,329.04	\$207.39
5/4/2017			\$15.00	Property Inspection	6/1/2015	\$39,310.08			\$15.00		\$263,731.31	\$0.00	\$0.00	\$18,344.04	\$207.39
5/4/2017			\$1.50	Property Inspection	6/1/2015	\$39,310.08			\$1.50		\$263,731.31	\$0.00	\$0.00	\$18,345.54	\$207.39
6/1/2017	\$1,637.92			Payment Due	6/1/2015	\$40,948.00					\$263,731.31	\$0.00	\$0.00	\$18,345.54	\$207.39
6/7/2017			\$15.00	Property Inspection	6/1/2015	\$40,948.00			\$15.00		\$263,731.31	\$0.00	\$0.00	\$18,360.54	\$207.39
6/7/2017			\$1.50	Property Inspection	6/1/2015	\$40,948.00			\$1.50		\$263,731.31	\$0.00	\$0.00	\$18,362.04	\$207.39
6/16/2017			\$243.00	Title Costs	6/1/2015	\$40,948.00			\$243.00		\$263,731.31	\$0.00	\$0.00	\$18,605.04	\$207.39
7/1/2017	\$1,637.92			Payment Due	6/1/2015	\$42,585.92					\$263,731.31	\$0.00	\$0.00	\$18,605.04	\$207.39
7/6/2017			\$95.00	BPO Costs	6/1/2015	\$42,585.92			\$95.00		\$263,731.31	\$0.00	\$0.00	\$18,700.04	\$207.39
7/14/2017			\$15.00	Property Inspection	6/1/2015	\$42,585.92			\$15.00		\$263,731.31	\$0.00	\$0.00	\$18,715.04	\$207.39
7/14/2017			\$1.50	Property Inspection	6/1/2015	\$42,585.92			\$1.50		\$263,731.31	\$0.00	\$0.00	\$18,716.54	\$207.39
7/17/2017			\$32.76	Late Charge	6/1/2015	\$42,585.92			\$32.76		\$263,731.31	\$0.00	\$0.00	\$18,749.30	\$207.39
7/25/2017			\$3,505.00	Publication Fee	6/1/2015	\$42,585.92			\$ 3,505.00		\$263,731.31	\$0.00	\$0.00	\$22,254.30	\$207.39
8/1/2017	\$1,637.92			Payment Due	6/1/2015	\$44,223.84					\$263,731.31	\$0.00	\$0.00	\$22,254.30	\$207.39
8/6/2017			\$1,102.50	F/C Atty Fees	6/1/2015	\$44,223.84			\$ 1,102.50		\$263,731.31	\$0.00	\$0.00	\$23,356.80	\$207.39